

# INFORMATION LETTER

## NATIONAL CANNERS ASSOCIATION

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### Canned Foods Account for Steady Volume in Retail Sales

Year to year sales consistency seems to be the profile emerging for canned foods as evidenced by Report No. 5 in N.C.A.'s Philadelphia Project, entitled *Seasonal Patterns in Retail Sales of Canned Foods for 1957*.

The 44-page study, second in a series of 12-month canned food sales reports, was published by N.C.A. in cooperation with American Stores Company, as part of the Consumer and Trade Relations Program. Copies of the report were mailed this week to N.C.A. members and others on the C&T.R. list.

*Seasonal Patterns* for 1957 provides a telling argument for the sales stability of canned foods when set side by side with *Seasonal Patterns* for 1956, published earlier (see INFORMATION LETTER of Jan. 4, page 1).

A comparison of the two years shows an amazing consistency in the percentage of total sales volume accounted for in each canned foods category. Canned vegetables showed no change at all from the total sales registered in 1956. Sales of canned fruits and juices increased less than 1 percent. Canned milk sales dropped about 1 percent and canned seafood sales were down about one-half of 1 percent.

In addition to this regularity of sales pattern from year to year, the report reveals a similar uniformity in volume of canned food sales from month to month, with no more than a 2 to 3 percent change in most instances.

*Seasonal Patterns* for 1957 was prepared in conjunction with 250 Acme supermarkets in the New Jersey-Pennsylvania area and is presented by the N.C.A. as a service to the food industry. An advance press release to the grocery and canning trade papers was distributed September 23, and issuance of the report this week was also announced by a press release accompanying copies of the report.

### Analysis of Food Additives Amendment to Food and Drug Act

Following is an analysis of the so-called food additives amendment to the Federal Food, Drug, and Cosmetic Act, providing for regulation of the use of food additives:

Canners who may employ "food additives" will naturally have a number of questions on how they will be affected by this new law. First, they will want to know how an additive is defined; second, whether any additives are exempt under the law; third, how soon they must act where Food and Drug Administration approval to use an additive is required; fourth, what steps must be taken to obtain such approval; and, finally, what criteria will govern the grant or denial of approval.

The new Food Additive Amendment legislation is modeled on the so-called Miller Pesticide Act, which amended the Federal Food, Drug, and Cosmetic Act to regulate the use of pesticide chemicals on raw agricultural products. It is designed to require pretesting of intentional food additives and to establish procedures for the regulation of their use.

Basically, this new series of amendments to the Food and Drug Act requires that any food additive whose safety has not been established cannot be used in food unless and until it has been pretested and its use has been licensed by the FDA after examination of the pretesting data.

#### WHAT IS A FOOD ADDITIVE

Food additives are defined in the Act as those substances which may reasonably be expected to become a component of any food or to affect the characteristics of any food. Cited as examples are substances intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food. Sources of radiation intended for any such use in foods are also included in the definition.

However, only intentional additives are covered. Substances which may accidentally get into food are not covered by the legislation. These accidental additives are already dealt with under the provisions of the Food and Drug Act dealing with adulteration, even unintentionally, by poisonous or deleterious substances.

Certain limited classes of intentional additives are not covered. Because they are already controlled by separate provisions of the Food and Drug Act added by the Miller Pest-

cide Act, pesticide chemicals in or on raw agricultural commodities are not included in the definition of food additives. Of particular interest to canners is the provision that where pesticides have been used on a raw agricultural commodity in accord with established tolerances and removed in processing to the extent possible by good manufacturing practice, and if the residues in the processed food are not in excess of tolerances prescribed for raw agricultural commodities, they are excluded from the scope of this new law. In effect, this provision enacts into law an interpretation that has been followed by the FDA in enforcing the Miller Pesticide Act. Also exempted are substances already approved for use under the provisions of the Federal Food, Drug, and Cosmetic Act, the Poultry Inspection Act, or the Meat Inspection Act.

#### ADDITIVES NOW IN USE

The new law covers not only additives that will be used in the future but many now employed. Some now used, however, may be exempt under a so-called "grandfather" clause. Any substance that is generally recognized among experts qualified by scientific training and experience to evaluate its safety as having been shown by scientific procedures, or in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use, is not covered by the amendment. Salt, sugar, margarine and commonly used seasonings are obvious examples of exempt additives, but some clarification in the case of many others is necessarily required. It is expected that the FDA will issue shortly a list of additives and the intended uses that will come within this limited exemption. In the meantime, the Commissioner of Food and Drugs, in a recent speech before the American Chemical Society, indicated that the FDA is "ready to consult with industry representatives on the status of additives now in use."

#### EFFECTIVE DATES

The new law became effective September 6, 1958, the date of signature by the President, but the immediate effective date is limited to setting up the procedure for determining the safety of food additives. As to any additive in use prior to January 1, 1958, even though it may not appear

on the expected list of items exempted on the basis of a common use in food prior to that date, the Act provides that no enforcement action may be undertaken to bar its use for 18 months following the effective date. This period may be extended by the FDA for an additional 12 months. The period may be cut down, however, if in the meantime the FDA has issued an order with respect to the use of the additive in accordance with the provisions of the Act. In the case of food additives the use of which was commenced after January 1, 1958, no enforcement action may be commenced for six months following the date of approval, or March 6, 1959.

The Commissioner of Food and Drugs has emphasized that even though these delays exist in the dates for commencement of enforcement action against non-exempted food additives, postponement of action to obtain required approval under the Act would be a great mistake. Flooding the FDA with last minute applications would necessarily result in dislocation and delays at the later date.

Some presently used and all new food additives will require approval. The heart of the new law is the procedure that the user or manufacturer of a food additive must follow to obtain approval of its use. The new law's basic principles of pretesting of food additives and the subsequent evaluation of the test data by the FDA underlie the procedures for receiving approval. They are contained in a new Section 409 added to the Food and Drug Act, and are modeled on those established with relation to pesticide chemicals in raw agricultural commodities in Section 408 of the Act.

Any person may file with the Secretary of Health, Education, and Welfare a petition proposing the issuance of a regulation prescribing conditions under which an additive may be safely used. Also, the Secretary upon his own initiative may propose the issuance of a regulation with respect to the use of a food additive.

The petition should set forth the name and all pertinent information concerning the additive, including its chemical identity and composition; full reports of scientific investigations of safety for use; the conditions of the proposed use of such additive; relevant data bearing on the physical or other technical effect such additive is intended to produce; the quantity required to produce such effect; when requested by the Secretary, the methods used to produce the additive; and a description of practical methods to determine the quantity of such additive left in or on food because of its use.

Although the law lists the basic information to be included in a petition, these requirements will be spelled out in more detail in procedural regulations that will be issued by the FDA.

The Commissioner has indicated that the FDA is already at work on the regulation and it is expected to be similar to the one issued to implement the Miller pesticide amendment.

Notice of the filing of a petition will be published by the Secretary within 30 days after filing. Within 90 days of filing of a petition, the Secretary will either issue a regulation prescribing conditions of use for the food additive involved, or by order deny the petition. In either case he is required to notify the petitioner giving reasons for his action. By written notice to the petitioner this period may be extended an additional 90 days.

#### TOLERANCES

A number of limitations are placed on the Secretary in his evaluation of that data accompanying a petition. The law specifies that no regulation permitting the use of the proposed food additive will issue if data before the Secretary fail to establish that the proposed use as a food additive will be safe or if the data show that the proposed use would promote deception of the consumer or otherwise result in adulteration or misbranding of the food within the meaning of the Act. If in the judgment of the Secretary a tolerance limitation on an additive is required to assure its safe use, the law requires that the tolerance shall be no higher than the level required to accomplish the desired technical effect.

#### "FUNCTIONAL VALUE" NOT TO BE CONSIDERED

The new amendments further provide that no tolerance for any new food additive shall be established unless a fair evaluation of the data shows that it would accomplish the intended physical or other technical effect. This is the residual language reflecting the legislative controversy concerning "functional value" with which the food industry was greatly concerned and on which the N.C.A. predicated most of its presentation at the hearings on various bills.

In many of the original proposals, the Secretary would have been authorized to consider the "functional value" of any food additive, and could have prohibited its use, even if safe, on the ground that in the judgment of the FDA it made no contribution of functional value to the consumer. As enacted, the bill authorizes the Secretary only to prohibit the use of any food additive which will not accomplish its intended physical or technical effect. For example, if the additive is to be offered as an emulsifier or antioxidant, it must effectively serve those purposes. The Committee reports make it abundantly clear that this does not embrace any grant of authority to the FDA to determine "functional value." Both the House and Senate Committee reports specify that:

"The phrase 'physical or other technical effect' refers to the objective effect which the additive may have on the appearance, flavor, texture, or other aspects of a food. The question of whether an additive produces such effect (or how much of an additive is required for such effect) is a factual one, and does not involve any judgment on the part of the Secretary of whether such effect results in any added 'value' to the consumer of such food or enhances the marketability from a merchandising point of view."

#### DETERMINATION OF SAFETY

In determining whether a proposed use of a food additive is safe, the Secretary is required to consider the probable consumption of the additive because of its use in all foods, the cumulative effect of such additive in the diet of man, and safety factors which in the opinion of experts are generally recognized as appropriate for animal experimentation data. This means that where a tolerance is required it may be necessary to divide its use between several competing products. Commissioner Larwick has already indicated that the safety factor that will be used by the FDA in complying with these limitations will be 1/100th of the quantity that is safe in a test animal's diet over a period of time.

What principally distinguishes the procedures under this new law from those relating to establishment of tolerances for pesticide chemicals under the Miller pesticide amendment is elimination of provisions for referral of petitions to an "advisory committee." In a letter addressed by the Executive Secretary of the N.C.A. to Chairman Williams of the Health and Science Subcommittee of the House Interstate and Foreign Commerce Committee, the undesirability of having such private groups exercise quasi-governmental functions without being subject to the general provisions of law governing the conduct of governmental officers was forcefully brought to the attention of the Committee.

Within 30 days after publication of an order, either establishing a regulation for the use of a food additive or denying a petition, any adversely affected person may file objections with the Secretary specifying the provisions of the order to which objection is made. As promptly as possible the Secretary will then hold a public hearing for the purpose of receiving evidence on the objection raised. Thereafter the Secretary shall by order rule on the objections that were the subject of the hearing. Any person adversely affected by this order may then obtain judicial review in a federal appellate court.

A substantial part of the hearings on the various food additive bills was concerned with the problems of appropriate judicial review. Because

the new legislation is essentially a licensing bill, many insisted that a complete new trial be afforded in the reviewing court rather than review in a federal appellate court on the basis of the record and findings made in the FDA. Others insisted that there be a more searching scope of appellate review.

The food additive legislation, as finally enacted, embodies a new standard of review requiring that the regulation be based upon a "fair evaluation of the entire record" rather than that there be "a substantial evidence on the record as a whole." In explaining this change, the Senate Committee Report quotes Congressman Williams on the House floor:

"Ever since the Congress began delegating regulatory functions to administrative agencies of the Government there has been disagreement among lawyers as to the fairness of the procedures under which the agencies operate. In 1946, the Administrative Procedure Act was passed in an effort to formalize the day-to-day rulemaking and regulatory procedures of Government agencies. The 1946 act provides that unless the findings of fact upon which administrative orders are based are supported by "substantial evidence" a federal court of appeals can reverse the order of the administrative agency. Court decisions have required that an administrative agency must give consideration to the entire record, including contradictory evidence, when it determines facts."

Manufacturers of food and of food additives have manifested concern that under an administrative type of control over the use of food additives, such as is provided by H. R. 13254, it would be possible for the institutional decisions of the Secretary of Health, Education, and Welfare to be based, for example, more upon the personal convictions of scientists employed by the Food and Drug Administration regarding the safety of an additive than upon the inferences fairly to be drawn from the scientific evidence of record. H. R. 13254 provides that orders regarding the use of food additives must be based upon a fair evaluation of the entire record. The committee has endeavored to prescribe a new statutory criterion requiring that a high standard of fairness be observed in administrative rulemaking under this bill. Personal attitudes or preferences of administrative officials could not prevail on the basis of being supported by substantial evidence picked from the record without regard to other evidence of probative value in the record. The United States Courts of Appeals will be able to enforce this high standard by determining whether the Secretary of Health, Education, and Welfare has given appropriate consideration to the inferences which should fairly be drawn from all of the evidence of record."

## 1958 Packs of Canned Fruits in California

Reports on the 1958 packs of canned peaches, fruit cocktail and other fruit mixtures in California have been issued by the Canners League of California and the Cling Peach Advisory Board.

As in the past, the pack totals for peaches in California will be included in the report to be issued later in the season by the N.C.A. Division of Statistics on the total U. S. pack of canned peaches.

Following are the 1958 packs of certain canned fruit products in California, with comparisons:

### CALIFORNIA CANNED FRUITS \*

	1957 (actual cases)	1958
Freestone peaches.....	4,763,334	5,190,133
Cling peaches.....	21,934,597	20,128,490
Fruit cocktail.....	14,863,778	15,077,868
Fruit for salad.....	1,172,379	848,005
Mixed fruits.....	279,360	285,833
Spiced peaches.....	407,306	365,743

Following are the 1958 packs of cling peaches and fruit cocktail by container size, with comparisons:

### CLING PEACHES \*

Container Size	1957 (cases)	1958 (cases)
24/2½.....	10,920,194	11,518,079
48/8Z.....	1,411,932	1,154,500
24/303.....	5,816,101	4,190,843
6/10.....	3,744,850	3,219,255
Misc.....	41,511	45,723
Total, actual cases.....	21,934,597	20,128,490
Total, basis 24/2½.....	18,483,666	17,525,872

### FRUIT COCKTAIL \*

Container Size	1957 (cases)	1958 (cases)
24/2½.....	4,019,043	3,843,669
48/8Z.....	1,806,702	1,655,429
24/303.....	7,517,559	7,892,975
24/2.....	260,867	262,562
6/10.....	1,277,130	1,423,233
Misc.....	2,447	0
Total, actual cases.....	14,863,778	15,077,868
Total, basis 24/2½.....	10,637,671	10,720,604

\* The pack of canned freestone peaches in California was compiled by the Canners League of California, and the packs of other canned fruit products were compiled by the Cling Peach Advisory Board, whose figures are subject to change on completion of audited pack figures in December.

## USDA Plentiful Foods List

The USDA Plentiful Foods List for November includes canned berries, canned ripe olives, apples, cabbage, cranberries, and potatoes; also, pork, turkeys, broiler-fryer chickens, eggs, peanut butter, and vegetable fats and salad oils.

## Apple Products for USDA

USDA announced on October 3 the purchase of 315,120 cases of No. 10 cans of applesauce and 252,000 cases of No. 10 cans of sliced apples, with section 6 funds, for distribution in the National School Lunch Program.

Invitations to offer additional quantities of both products meeting the same specifications, Grade A for sauce and modified Grade C for slices, will be mailed by USDA to prospective bidders in the near future. Purchases will be made with funds transferred from section 32.

## Quartermaster Association

The Quartermaster Association will hold its annual convention at the Benjamin Franklin Hotel in Philadelphia October 9-10, and the program includes these events of special interest to canners:

A seminar on operation of the Military Subsistence Supply Agency, moderated by its Executive Director, Maj. Gen. Hugh Mackintosh, and by Alfred J. Stokely as industry chairman—to be held Oct. 9 at 2 p.m.

A panel discussion on commissary operations, with Col. M. E. Mansager, Chief of the Army Subsistence Center, as monitor and Harry B. Gorsuch as moderator-chairman—to be held Oct. 10 at 9 a.m.

A panel discussion on the Army and Air Force Exchange Service, moderated by the Chief of that Service, Maj. Gen. Harlan C. Parks, and by Col. W. E. Murphy, now Chief of the Baltimore Service Center—to be held Oct. 10 at 2 p.m.

## Average Prices for Cherries

Following are preliminary season average prices per ton received by growers for sweet cherries and sour cherries for processing during 1957, as reported by the Agricultural Marketing Service of USDA:

### SWEET CHERRIES

State	1957 (dollars per ton)	1958
New York	258	200
Michigan	250	220
Washington	278	252
Oregon	301	282
California	246	346

### SOUR CHERRIES

State	1957 (dollars per ton)	1958
New York	150	170
Ohio	150	165
Michigan	131	165
Washington	165	164

## REPORTS ON ASSOCIATION ACTIVITIES

### Public Relations Counsel

Among the important services to the canning industry performed by Dudley-Anderson-Yutzy, the public relations firm which conducts N.C.A.'s Consumer and Trade Relations Program, is the function of representing the canning industry's interests and N.C.A.'s point of view among food industry spokesmen in many areas. In this capacity DAY provides guidance to advertising agencies, publications, suppliers, allied industries, publicity organizations and leaders in many fields of education. DAY also helps N.C.A. in the prevention and correction of misstatements and misinterpretations about canned foods.

During the past three months such activities have included discussions with varied groups: the *Harvard Business Review*, American Institute of Food Distribution, *Readers' Digest*, Market Research Corporation of America, Northeastern Council of School Lunch Directors, and Pleezing, Inc. DAY activities at the meetings of the American Home Economics Association, Newspaper Food Editors Conference, National Restaurant Association, Institutional Food Editorial Conference, National Association of Retail Grocers and Super Market Institute have engendered wide interest in canned foods and the activities of the N.C.A., including the annual Convention.

Helping to provide platforms from which to state N.C.A. philosophy is another broad public relations activity. In July the National Retailer-Owned Grocers, Eastern Division, heard Carlos Campbell cite the advantages of canned foods from the economic point of view, in a speech delivered in New York and given widespread consumer and trade publicity. Editorials by Mr. Campbell appeared in *Food Business* and *Food Field Reporter*.

Highlight among events of the past quarter was the "September is Canned Foods Month" promotion, to which C.&T.R. activities were slanted. A primary function of DAY was promotion planning and counseling with the advertising and promotion managers of consumer publications such as *American Home*, *American Weekly*, *Everywoman's Family Circle*, *Farm Journal*, *McCall's* and *Ladies' Home Journal*.

Editorial assistance was requested from NEA Syndicate reaching 900 newspapers with 7,000,000 circulation, Bell Syndicate reaching 35 newspapers with 2,156,800 circulation, *Parade*, *American Weekly*, *New York Post*, *New York Mirror*, Feeding the Family Syndicate reaching 40 papers with 910,000 circulation, *Family Circle* and *Seventeen*.

Trade paper assistance was given to *Food Field Reporter*, *Food Business*, *Food Topics*, *Chain Store Age*, *Progressive Grocer*, *Supermarket News* and *Super Market Merchandising*.

"September is Canned Foods Month" materials prepared under the C.&T.R. Program included a Do-It-Yourself kit for local publicity supplied to N.C.A. members. This included a letter offering suggestions for local tie-ins with the September Month, two newspaper releases for individual canners to personalize with their own firm names, letters to radio and TV program directors with suggestions for public service type programs, and suggested station breaks saluting canned foods, letters to clubs and schools offering N.C.A. films for program use, and a letter to local retailers urging in-store promotions.

For food editors and consumer education experts, DAY produced a full-color map in the Covarrubias style showing how the various states rank in production of canned foods and the principal products packed in each state. These were distributed to nearly 1,500 newspaper, radio, TV, and magazine editors, home service directors, home economists, marketing specialists and others in the field of consumer education.

C.&T.R. materials, including *The Almost Complete Canner* and *A Canner's View of the United States*, were adapted and developed in exhibits produced by N.C.A. for the U. S. Department of Agriculture in its month-long tribute to the canning industry.

*The Almost Complete Canner* has furnished the theme for an industry-wide promotion launched by *McCall's* magazine for next January—1959 Super Market Month. This promotion has been sponsored by *McCall's* for years, on behalf of the Super

Market Institute and the food retailing fraternity. This year the background for *McCall's* editorial pages and for point-of-sale to be featured in 2,000 super markets will be N.C.A.'s list of 1,029 canned foods as they appear in *The Almost Complete Canner*. Bulletins to the industry will keep them apprised of this tie-in promotional opportunity.

The Philadelphia Project, a market research activity which has been continuing for three years under the auspices of the C.&T.R. Program, has focused attention on N.C.A. in the area of retail handling of canned foods. During the past three months, Report No. 4, "Retail Sales Analysis of Canned Fruits and Juices" and Report No. 5, "Seasonal Sales Patterns for 1957," were published. These reports and the research activity leading to their publication served to spotlight the importance of canned foods among retailer groups and organizations. Among those consulting with DAY in this specific area since June have been Pleezing, Inc., NROG, Super Market Institute, *Food Topics*, *McCall's*, *Saturday Evening Post*, and NARGUS.

The Canning Crops Contest has been an important source of publicity in the area of canner-grower cooperation and has been a contact point with the secretaries of state canner associations as well as the state agricultural extension leaders, 4-H groups, etc. "Dear Eddie" and "John Porter," N.C.A.'s two films dealing with this subject, have been shown in the past three months to 58 groups.

"The Three Squares," N.C.A.'s general consumer information film on the canning industry, has been distributed widely, with 57 total showings, including 17 TV programs.

Reprint mailings of published material singled out for special attention among the N.C.A. membership have included *Chain Store Age*, *American Home*, *Food Service*, *Food Business*, *Food Field Reporter*, *American Weekly*, *Seventeen* and an advance notice regarding Super Market Month.

## TABLE OF CONTENTS

ASSOCIATION ACTIVITIES	PAGE	PAGE
Reports on Association activities:		
Public relations counsel .....	296	295
CONSUMER AND TRADE RELATIONS		
Canned foods account for steady volume in retail sales .....	293	
FOOD REGULATION		
Analysis of food additives amendment to Food and Drug Act .....	293	
PROCUREMENT		
Apple products for USDA .....	295	
Quartermaster Association .....	295	
PUBLICITY		
USDA Plentiful Foods List .....	295	
STATISTICS		
1958 packs of canned fruits in California .....	295	
Average prices for cherries .....	295	